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## OPEN PRICE ASSOCIATIONS<sup>1</sup>

Legalized price maintenance has been extensively advocated among manufacturers for avoiding the evils of price cutting upon identified products by jobbers and retailers. Another widely different plan for stabilizing prices also of unidentified products among manufacturers themselves is being received with increasing favor. Although in a number of respects the motives are not the same, the chief difference between the two policies lies in the attitude toward future prices. Price maintenance proposes fixed prices for future transactions; the new so-called "open price" policy<sup>2</sup> proposes nothing with respect to prices except that they shall be made "intelligently." Each manufacturer fixes his own selling price as he sees fit and changes it when he so desires; but in fixing prices he should have the fullest and most accurate knowledge of market conditions, of what other firms in the same line are doing, in price, in tonnage, stocks, shipments, rebates, discounts, and the like.<sup>3</sup> The underlying theory is that instability and disorganization of business are due chiefly to ignorance or misinformation as to actual market conditions and as to costs of manufactur-

<sup>1</sup> The data upon open price associations upon which the following article is based have been secured from documentary material and from personal interviews and personal correspondence with officers and members of these organizations. A small amount of material may be secured from trade journals and other sources, to some of which reference is made below.

<sup>2</sup> The terms "open price," "open price policy," and "open price association" were first given prominence in the year 1912 in a book entitled *The New Competition*, by Arthur Jerome Eddy, a Chicago lawyer. The greater part of the work is occupied by a description of present-day competitive methods, but it also contains (chs. 9 and 10) a constructive plan for a type of association which was designed to eliminate some of the evils and wastes of competition. The book has been read by increasing numbers of business men, who generally credit Mr. Eddy with originating the plan. Mr. Eddy is at present legal counsel for a number of these organizations.

<sup>3</sup> Clark McKercher, in *Transactions of the National Association of Cotton Manufacturers*, No. 98, 1915, p. 178. Mr. Eddy defines the "open" prices as "a price that is open and aboveboard, that is known both to competitors and customers, that is marked wherever practicable in plain figures on every article produced, that is accurately printed in every price list issued—a price about which there is no secrecy, no evasions, no preferences. In contract work it means that every bid made and every modification thereof shall be known to every competitor for the order; it means that even the cunning and unscrupulous competitor may have this information." *The New Competition*, p. 110.

ing and marketing. Accurate knowledge upon these matters is declared to be a sufficient remedy.<sup>4</sup>

To provide this information most efficiently, coöperation among concerns engaged in the same line of business has been found necessary. Open price associations which adhere strictly to the policy aim simply to provide the machinery for the collection and dissemination of the desired knowledge concerning market conditions. They may be described as associations of competitors formed for the purpose of improving business conditions through the interchange of information and opinion as to prices and other factors relating to business transacted.<sup>5</sup>

### *Spread of Open Price Associations*

The movement toward the formation of open price associations has taken hold in all parts of the United States and in widely different industries.<sup>6</sup> In the textile branch, among the first to adopt the plan were about thirty-five of the important finishing firms (bleachers, dyers, and printers) who early in 1914 united to form the National Association of Finishers of Cotton Fabrics.<sup>7</sup> Its success has stimulated the formation of similar associations among textile manufacturers, such as the Gingham Association, formed in the fall of 1915 by the leading gingham mills; and local associations of mill owners at Fall River and New Bedford, Massachusetts.<sup>8</sup> Knit goods manufacturers have recently united and the matter has been actively agitated among white goods bleacheries, silk goods manufacturers, and among mill owners in Southern cotton centers.<sup>9</sup> Interest in textile circles became so active that

<sup>4</sup> "Knowledge regarding bids and prices actually made is all that is necessary to keep prices at reasonably stable and normal levels." *Ibid.*, p. 121.

<sup>5</sup> In the following, the term "open price association" will be applied to all organizations of competitors which have adopted more or less fully open price methods.

<sup>6</sup> Estimates as to the numbers of open price associations in operation vary so widely—from twenty to "hundreds"—as to be practically worthless. It seems that the lower estimate is somewhat too conservative. It is true that the number of associations which have adopted the plan in its entirety is not large, and of these but few are of national importance. *Cf. New York Journal of Commerce and Commercial Bulletin*, Nov. 12, 1915.

<sup>7</sup> This association was organized in close conformity with the plan proposed by Mr. Eddy, who has been its counsel since organization.

<sup>8</sup> *Cf. Journal of Commerce*, Oct. 30, 1915; Feb. 29, 1916; Apr. 3, 1916; May 27, 1916.

<sup>9</sup> *Ibid.*, Jan. 4, 1916.

the largest trade organization, the National Association of Cotton Manufacturers, took up the study of open price methods.<sup>10</sup> As a result of this investigation, a project is now under consideration for a reorganization of the National Association which will involve an extension of its activities so as to include a bureau for the interchange of market and price information and opinion which is the essence of open price policy. Among manufacturers of woolens and worsteds agitation extending over many months bore fruit in the formation of the Woolen Goods Exchange. Though at present including only fourteen firms, some of these are the largest in the United States.<sup>11</sup> The Woolen Goods Exchange was organized under the auspices of the National Association of Wool Manufacturers, the secretary-treasurer of that trade organization being also the secretary of the exchange.

In the lumber industry, the adoption of open price methods is being pushed. The Southern Pine Association, the successor to the Southern Pine Manufacturers Association, declared illegal by a Missouri supreme court decision, is considering an extension of its work so as to place it upon an open price basis.<sup>12</sup> Another trade organization, the Western Pine Manufacturers, has a department known as the Information Bureau which has carried on open price work since 1912. Affiliation with this particular de-

<sup>10</sup> Cf. *ibid.*, Nov. 11, 12 and 15, 1915; Oct. 30, 1915; and especially Jan. 4, 1916. Also *Transactions of the National Association of Cotton Manufacturers*, No. 98, 1915, pp. 176 *et seq.*

<sup>11</sup> The American Woolen Company and the Cleveland Worsted Mills Company are among the members. There are several other exchanges operating along lines similar to the Woolen Goods Exchange. Among them are: Pipe Fittings and Valve Exchange, Brass and Copper Statistical Exchange, Range Boiler Exchange, Fine Cotton Goods Exchange, Tubular Plumbing Goods Exchange, Meter Manufacturers' Exchange, National Gas Appliance Manufacturers' Exchange, Rubber Association, Druggist Sundries Division.

<sup>12</sup> One of the recent recommendations of the board of directors of the Southern Pine Association was that the association create a committee of sales to consist of twenty-five members and to have a permanent salaried secretary to gather information as to actual sales and selling prices, this information to be published in the association's weekly bulletin. The recommendation suggested that members pledge themselves to make daily reports to the secretary of the committee showing an accurate abstract of actual sales, specifying quantities, prices, grades, and rates of freight. *Southern Lumberman*, Feb. 10, 1917, p. 27; *American Lumberman*, Feb. 10, 1917, p. 420. Cf. also report of Committee in Accounting and Statistics, *Southern Lumberman*, Feb. 17, 1917, p. 27. For purposes of association, cf. *American Lumberman*, Dec. 5, 1914, p. 40.

partment is open only to members of the trade association, but is optional with them; nevertheless, practically all of the larger mills and many of the smaller have joined. The most notable example of open price associations among lumber manufacturers is furnished by the Hardwood Manufacturers Association of America.<sup>13</sup> Originally merely a trade association, it has recently adopted the open price plan in its entirety and began operating under it March 1, 1917. It is intended that eventually all hardwoods shall be included, but in the beginning its operation is to be confined to oak, the lumber most commonly produced by members.<sup>14</sup>

In the steel, iron, and hardware business, one of the oldest open price associations and one which has received considerable publicity is the Bridge Builders' and Structural Society,<sup>15</sup> embracing many of the large iron and steel interests not identified with the Steel Corporation. It has been in successful operation since May, 1911, and at the outset included twenty-five firms. Another open price organization, the Associated Metal Lath Manufacturers, consists of eight firms representing about ninety per cent of the metal lath production of the country. Manufacturers of tacks are organized to carry out open price methods in the National Association of Tack Manufacturers. The Pressed Metal Association comprises twelve of the largest firms manufacturing metal stampings. The National Association of Sheet and Tin Plate Manufacturers, the Manganese Steel Founders Society, and the National

<sup>13</sup> Cf. Draft of Proposed Plan for Establishing Open Competition among Hardwood Manufacturers. Prepared by a Committee Appointed by the Board of Governors of the Hardwood Manufacturers Association on Dec. 15, 1916. Approved by the Board of Governors, Jan. 29, 1917. (Reprinted in *American Lumberman*, Feb. 3, 1917, pp. 42-43; see also *Southern Lumberman*, Feb. 3, 1917, pp. 23 *et seq.*)

<sup>14</sup> The Gum Lumber Manufacturers Association issues a series of sales reports upon the basis of reports made by members, an approach toward open price methods. *Southern Lumberman*, Jan. 27, 1917, p. 34; *St. Louis Lumberman*, Feb. 1, 1917, p. 68.

The West Coast Lumbermen's Association added during 1916 a statistical bureau which issues information upon trade conditions based upon reports received currently from about 125 members. *American Lumberman*, Feb. 3, 1917, p. 40.

The Oak Manufacturers Association is also considering a reporting plan. *St. Louis Lumberman*, Feb. 1, 1917.

<sup>15</sup> Upon the Bridge Builders' and Structural Society, cf. *Journal of Commerce*, Nov. 11, 1915. Also testimony of John Sterling Dean, in the case *United States v. the U. S. Steel Corporation and others*. District Court of U. S., New Jersey district. Transcript of record, vol. II, pp. 797 *et seq.*

Association of Brass Manufacturers may be added to the list of associations which have adopted the open price plan.

In the leather trade, the National Association of Tanners is urging the formation of open price associations among its members. At present, only one of the sub-groups, the upper leather group, is operating under the plan, but it is expected that other groups of leather manufacturers will follow shortly.<sup>16</sup> The Cut Sole Manufacturers Association has been in existence for about six years. Following unsuccessful attempts to fix prices in 1909 and 1910, the Leather Belting Exchange<sup>17</sup> was started in August, 1915, as an open price organization with a membership which has subsequently grown to include thirty-eight concerns engaged in leather belting manufacture and representing about 65 per cent of the total production of the United States.

A number of territorial associations employing open price methods are said to exist in the milling industry.<sup>18</sup> Among asbestos manufacturers, the Asbestos Textile Manufacturers Association, the Asbestos Brake Lining Association, and the Asbestos Paper Manufacturers Association have adopted a modified plan for reporting actual sales, prices, and stocks. Many members of the American Faced Brick Association have united to carry out in part the open price methods through the central office of the trade organization.<sup>19</sup> Michigan salt producers have adopted the open price form of coöperation in the Salt Producers Association; so also the manufacturers of optical goods.<sup>20</sup> It is unnecessary to proceed further with the enumeration. It is sufficiently clear that the importance of some and the wide variety of industries affected render this type of organization deserving of detailed study.<sup>21</sup>

<sup>16</sup> *E.g.*, the heavy leather, fancy leather, and the upholstery leather groups.

<sup>17</sup> For information upon the Leather Belting Exchange, consult printed copies of two speeches held at the Babson Conferences on Coöperative Competition, one by the secretary of the Exchange, Louis W. Arny, Sept., 1915, the other by Mr. W. V. Spaulding, Sept., 1916.

<sup>18</sup> Of the half dozen millers associations said to be operating upon an open price basis, specific information could be secured concerning only the Ohio Millers State Association.

<sup>19</sup> *Cf.* in this connection the speech of Mr. J. Parker D. Fiske before meeting of New England Builders Supply Association, Feb. 20, 1917. Outlined in the Annual Official Program, pp. 84 *et seq.*

<sup>20</sup> The Optical Manufacturers Association adopted the open price plan in June, 1916. Thirteen firms located in Massachusetts, Rhode Island, New York, Pennsylvania, New Jersey, and Michigan are at present included in the membership.

<sup>21</sup> To the open price associations mentioned above, may be added the National

*Organization and Operation of Price Associations*

*Origin.* The associations of competing firms through which the open price plan is put into operation may be organized specifically for that purpose, as some of the textile associations.<sup>22</sup> The larger number of associations are developments of trade organizations, which either have been fully converted into open price associations, or have established departments for the interchange of information as to prices obtained in actual sales, stocks, etc., and encourage their members to participate in the work.<sup>23</sup> Often information is cleared through the office of the secretary of the trade association, but in other cases special secretaries and agencies are employed.

*Objects.* The ultimate purpose of every open price association is to effect greater stability and increased profit in the business of its members through coöperation along certain lines. The immediate object as declared in the articles of association is usually to provide means whereby the final result is to be accomplished. Provision for the collection and distribution of information is essential. To quote from the plan of the Hardwood Manufacturers Association,<sup>24</sup> the purpose is: "To disseminate among members accurate knowledge of production and marketing, so that each member may gauge the market intelligently instead of guessing at it; to make competition open and aboveboard instead of secret and concealed; to substitute in estimating market conditions frank and full statements of our competitors for the frequently colored and misleading statements of the buyer." More specifically stated is the fifth object of the Bridge Builders' Society "to establish frankness regarding bids, terms, and prices actually made."<sup>25</sup> Although in some cases, the objects are stated in very general terms,<sup>26</sup> the

Association of Stationers and Manufacturers and the Tobacco Merchants Association; others are said to be in operation among manufacturers of rigid electrical conduits, powder, beet sugar, and knives. A portion of the membership of the National Association of Steel Furniture Manufacturers is also operating under the open price plan.

<sup>22</sup> *E.g.*, National Association of Finishers of Cotton Fabrics, local associations at New Bedford and Fall River. The Pressed Metal Association and the Leather Belting Exchange are also examples.

<sup>23</sup> *E.g.*, the National Association of Tanners, Western Pine Manufacturers Association, Hardwood Manufacturers Association.

<sup>24</sup> *American Lumberman*, Feb. 3, 1917, p. 42.

<sup>25</sup> *United States v. U. S. Steel Corporation et al.* Transcript of Record, vol. II, p. 807.

<sup>26</sup> For instance, the object of the Cut Sole Manufacturers Association is "to promote social intercourse and general prosperity of those engaged in the cut sole business." By-laws, art. I.

larger associations specify with considerable detail what they intend to do. In addition to the main purpose of providing machinery for the exchange of information, bringing about standardization of product and facilitating the adoption of a uniform cost accounting system are often mentioned. Both are desirable for the effective operation of open price methods. The objects of the Cotton Finishers Association<sup>27</sup> include others also; but only three of

<sup>27</sup> Article II of the Constitution of the National Association of Finishers of Cotton Fabrics reads:

"The objects of the association are as follows:

"A. To promote publicity in the transaction of business, and to promote cordial and friendly relations among members, by means of monthly and other stated meetings, thereby removing, so far as possible, misunderstandings and ill feelings due to the spreading of false reports and baseless charges, and to ignorance of conditions prevailing in the industry.

"B. To collect and disseminate accurate information relating to the finishing of cotton fabrics, to the end that each finisher, however small his output, may be placed, in so far as data for the intelligent conduct of his business goes, on a footing of equality with other finishers.

"C. To coöperate with customers in the maintaining of high standards in the manufacturing and finishing of cotton fabrics.

"D. To devise a scientific system of cost accounting, to the end that every one engaged in the industry may accurately know the cost of his output. In this connection, it is not the purpose of the Association to impose upon any member any cost items or to use in any manner the cost system as a means for controlling prices. The sole object is to secure, if possible, the adoption of a scientific system of cost accounting, without in any manner seeking to have disclosed the actual costs of a member. In this connection the Association is in hearty accord with legislation now pending in Congress looking toward the adoption of uniform scientific cost systems.

"E. To take up and carefully consider sanitary, hygienic and safety measures and appliances and, in this connection, the insurance and pensioning of employes and the welfare of employes generally, and to coöperate with legislative and other public bodies in the framing of laws along these lines.

"F. The bringing out into the open of all competitive conditions and the introduction of the open price policy, to the end that whatever price information is distributed to producers and consumers, it will be absolutely accurate.

"IMPORTANT: There are no penalties of any kind or character connected with the operation of the Association. Members may or may not file information called for by the Reporting Plan hereafter set forth; if they do not file they get no information; if they do file, they get like information in return.

"There is nothing secret about either the meetings or the operations of the Association. All its proceedings are reduced to writing and carefully kept in the minutes. Customers may attend meetings and become familiar with the operations of the organization. Members are free to invite competitors, who are not members, to attend meetings of the Association.

"Nothing in the plan or operation of the Association shall be understood or.



them are closely connected with the open price plan: (a) to promote publicity in the transaction of business, (b) to devise a scientific system of cost accounting, (c) to introduce the open price policy. Other purposes are not peculiar to open price associations and may be attempted by organizations having nothing to do with costs or prices.

*Membership.* The membership of open price associations may include firms located in all parts of the country.<sup>28</sup> More often members are drawn from a smaller area, a large section,<sup>29</sup> or a single state,<sup>30</sup> while some associations are confined to firms in a small locality.<sup>31</sup> Nevertheless, for successful operation it is important that territory be sufficiently limited to permit ready exchange of information and meetings of members at frequent intervals. As a consequence, associations whose membership covers a wide area have found it advisable to divide into smaller sections.<sup>32</sup> Also, where there is much specialization among members of a large organization, sub-grouping of members may be made upon a product basis, as in the case of the Tanners Association.

Membership in open price associations is ordinarily open to any firm, corporation, or individual in good standing engaged in the particular line of business in the territory covered, which will agree to comply with the provisions of the constitution and by-laws and other rules of the organization, and to pay the required dues and fees. Where trade associations have taken up the work, membership in these is usually a prerequisite for participation in the open price plan;<sup>33</sup> but membership in the former is in most

construed as directly or indirectly restraining the freedom of any member to at all times quote such prices and terms as he pleases, each member being as free to compete for business as he would be if the Association did not exist."

<sup>28</sup> *E.g.*, Hardwood Manufacturers Association of America, National Association of Finishers of Cotton Fabrics, Leather Belting Exchange.

<sup>29</sup> *E.g.*, Bridge Builders' and Structural Society, Pressed Metal Association, Optical Manufacturers Association.

<sup>30</sup> *E.g.*, Ohio Millers State Association.

<sup>31</sup> Local associations at Fall River and New Bedford, Mass.

<sup>32</sup> The Leather Belting Exchange divides its members into Eastern and Western groups. Spaulding, p. 5.

The members of the American Faced Brick Association participating in the open price plan are subdivided upon what is nominally a product basis, *i.e.*, according to varieties of brick, but for practical purposes is also roughly geographical, because of the difference in the varieties produced by different sections.

<sup>33</sup> *E.g.*, Western Pine Manufacturers Association, Hardwood Manufacturers Association.

cases unrestricted. Application to the secretary, agreement to abide by the constitution and by-laws, and the payment of dues satisfy the requirements for admission to membership in the Ohio Millers State Association.<sup>34</sup> Unanimous election is required for entrance into the American Tack Manufacturers Association.<sup>35</sup> To become a member of the Cotton Finishers Association, a concern engaged in the trade must be proposed for membership by a member, be approved by a majority of the executive committee, and be elected by a majority of members.<sup>36</sup> Since it is to the advantage of open price associations to have as complete a membership as possible, restrictions upon membership are practically non-existent. To defray the expenses, certain associations require the payment of an initiation fee in addition to periodical dues.<sup>37</sup> Others confine their financial requirements to annual dues and assessments which vary in amount according to the scope of association activity. The initiation fees are fixed in amount, but the annual dues are often graded according to the capacity of members.<sup>38</sup>

Members pledge themselves to give certain information regarding their business to the central office and have the right to receive information so long as they live up to their part of the agreement. No penalties are imposed for failure to make reports except the withholding of information reported by other members. Outside of the agreement to give information and to pay dues, no obligations are imposed upon the members of an open price association.

<sup>34</sup> Constitution, Ohio Millers State Association, art. II, sec. 1. Section 2 provides that firms or corporations other than those engaged in manufacture of flour or meal may become associate members, having all privileges of regular members except voting. This is unusual.

<sup>35</sup> Articles of American Association of Tack Manufacturers, art. I.

<sup>36</sup> Constitution, National Association of Finishers of Cotton Fabrics, art. IV, sec. 1.

<sup>37</sup> For instance, the initiation fee required by the Pressed Metal Association is \$50.

<sup>38</sup> The annual dues of the members of the Pressed Metal Association are based upon the volume of sales of metal stampings and range from \$200 to \$1,000 a year. The American Tack Manufacturers Association levies dues of 5 cents per 100 lbs. The Ohio Millers State Association has a graded list of annual dues according to the daily mill capacity, from \$10 for mills of less than 60 bbls., \$15 for 100-200 bbl. mills, and higher for larger capacity. (Constitution, art. IV, sec. 1.)

The Cut Sole Manufacturers Association requires a fixed annual payment of \$70 (By-laws, art. 5). In the National Association of Sheet and Tin Plate Manufacturers, the dues vary from \$100 to \$200 per hot mill per year.

*Meetings.* Frequent meetings are an important feature in the operation of successful open price. Many of the associations hold monthly sessions,<sup>39</sup> others at greater intervals.<sup>40</sup> At these meetings, general business conditions and other topics are considered, but it is to discussion of prices that greatest interest attaches. Upon the basis of information which has come through the operation of the reporting system, members ask and answer questions as to the details of past transactions, reasons for quoting prices, methods of figuring costs and the like. There is, of course, great danger that the discussion may consciously or unconsciously shift to future prices unless the members have been duly impressed with the importance of guarding against express or implied reference to future prices. Many associations have adopted a policy of having competent counsel present at every meeting to keep the discussion clearly within legal limits and to pass upon the legality of any action. Some associations also make a practice of filing minutes of meetings with the Federal Trade Commission; or at least leaving them open to inspection by authorities.

*Officers.* The officers of open price associations are the usual officers of formal organizations, such as president, vice-president, secretary and treasurer, with a board of directors or an executive committee, and occasionally both.<sup>41</sup> The attorney or counsel is classed as an officer in the American Tack Manufacturers Association.<sup>42</sup> With the exception of the secretary and attorney, the officers are members of the association, serving usually without compensation. The duties of the president, vice-president, and

<sup>39</sup> The following hold monthly meetings: "Asbestos Textile Manufacturers Association, Cotton Finishers Association, Bridge Builders' and Structural Society. Meetings of the Pressed Metal Association are held monthly in different cities covering the territory from Detroit to Boston in a year. The Leather Belting Exchange members meet monthly in two groups. The meeting of the Western Group is held in Chicago; this is reheld in New York a week later. Every three months a joint meeting is held alternately at Chicago and New York.

<sup>40</sup> The Cut Sole Manufacturers Association holds eight regular meetings per year. In the American Tack Association, regular meetings are called by the secretary, ten days' notice being given to members.

<sup>41</sup> Officers of the Pressed Metal Association are president, vice-president, secretary and treasurer. The last two are held by an acting commissioner. There is also an executive board. Cotton Finishers Association: president, vice-president, secretary, treasurer and executive committee; American Tack Association: president, vice-president, secretary, treasurer, attorney, executive committee.

<sup>42</sup> Agreement, American Tack Manufacturers Association, sec. 8.

treasurer are not different from those pertaining to such offices. On the other hand, the secretary is more often than not a paid official, not a member of the association. The duties of the secretary, when he has charge of the clearing of information will be described below in connection with the discussion of the reporting plan.

*The Central Office.* A central office where reports are received from members of the association and from which information based thereon is distributed is necessary for the operation of an open price association. Three methods of providing this may be distinguished. Certain associations such as the Bridge Builders' Society, Cotton Finishers' Association, and the Leather Belting Exchange have their own central offices in charge of salaried secretaries.<sup>43</sup> Under the second, the open price associations may exchange information through the secretary of the trade organization where in some cases special bureaus or departments have been provided for the work. A third method is that of several organizations reporting to a single office not connected with any one of them.<sup>44</sup> This office may be in charge of an impartial individual or firm which undertakes to combine the work of several associations, no one of which is willing to maintain a separate office.

*The Reporting Plan.* The reporting plan is the essential feature of any open price association. It is in this that associations differ most widely; and it is the character of the reporting plan which indicates how far open price methods have been adopted by any association. The reporting plan must, of course, be adapted to the nature and volume of each business and to the extent to which members are able and willing to coöperate in furnishing information to be passed on to competing concerns. Two general types of reporting plans may be distinguished. The first is that employed in contract work, adapted to businesses in which it is customary to ask for and receive bids upon specific pieces of work, no two sets of specifications being alike. The plan of the Bridge Builders' and Structural Society well illustrates this type.<sup>45</sup> Each

<sup>43</sup> The open price work of the Pressed Metal Association is in the hands of a Boston firm of certified public accountants and industrial engineers, a representative of which has charge of the association office.

<sup>44</sup> The National Association of Brass Manufacturers combines with others in clearing through a Chicago office. The Associated Metal Lath Manufacturers operates through the Armstrong Bureau of Related Industries (Chicago).

<sup>45</sup> Cf. *United States v. U. S. Steel Corporation*. Transcript of Record, vol. II, pp. 797 *et seq.* Also *New York Journal of Commerce*, Nov. 11, 1915. References to reports are made in the *Iron Age*, July 18, 1912; Jan. 20, 1916. Of

member of the society pledges himself to make reports to the central office. When a bid for a certain piece of work is made by any member, a copy is sent at once to the central office in charge of a paid secretary. These bids may be sent in open or sealed. If the bids are open, the information in the reports is exchanged at once between all competitors bidding upon the same contracts. If firms *A*, *B*, *C*, and *D* have made bids upon the structural ironwork of a New York office building, they send their reports to the secretary unsealed. The information is immediately interchanged, so that each firm knows what the others have bid. The firms that do not make bids get none of this information. But if the firm *D* sends in its bid sealed, the information as to its bid is withheld from the other bidders until after the contract is closed. Likewise information as to the other bids is withheld from *D*. The practice of making sealed bids was used quite frequently by members during the early stages of the organization, but the members of the structural society soon gave it up as unnecessary. After putting in one bid, any firm is free to revise its bid after seeing the others, as radically and as often as it pleases. Nevertheless, the practice of revising so late as to prevent others from doing likewise is discouraged. Upon the basis of these daily reports of contracts and bids and other information secured from members, the secretary compiles statistics as to the totals of contracts, tonnage and relation to capacity, in addition to the frequent reports upon sales and contracts.<sup>46</sup>

interest is also a reference to the method of submitting bids, *Iron Age*, July 1, 1915, p. 57. Upon reporting plans in general, *cf.* Eddy, pp. 122 *et seq.*

<sup>46</sup> The reporting plan of the National Association of Finishers of Cotton Fabrics is similar because the work is usually done on contract. At the beginning each member sent in prices then in existence with names of customers, terms, and conditions. Each member reports daily as soon as made every quotation, verbal or written, giving the name of the customer, description of work, quantity, terms, discounts, and all inducements, direct and indirect, offered to secure the order or contract. Each week each member files with the secretary, on a specially prepared blank, statistical information as to the quantity of orders, in pounds or yards, and the number of days' work ahead. This information is classified by the secretary, who makes daily and weekly reports to the members, sending to each member, however, only that information which concerns the branch of the finishing trade in which he is engaged, unless specially requested to do otherwise. An exception to the general procedure is made "whenever the bidder pursues a policy followed by the government and other public bodies of asking for bids to be submitted at a given date and opened at a given hour," in which case the Finishers Association will interchange no information until after the date and hour fixed by the customer.

The procedure is much the same in the Pressed Metal Association.<sup>47</sup> When in response to the requests of a manufacturer a member of the association makes a quotation upon the basis of costs, including a certain rate per thousand for the stamping and an initial charge to apply on the cost for manufacturing the dies and tools necessary to produce the part, a copy of the quotation, which is usually in the form of a letter, is forwarded to the com-

<sup>47</sup> The following are typical forms used by members of certain open price associations for reporting bids made and contracts awarded. A third form is also given for a secretary's report of quotations.

REPORT OF BID TO COMMISSIONER  
XYZ ASSOCIATION

FOR INTERCHANGE AMONG MEMBERS REPORTING BIDS ON JOB SHOWN BELOW

..... 19....

John Smith, Commissioner

Dear Sir:

We herewith report our.....bid, submitted  
(ORIGINAL OR REVISED)  
on..... 19...., (our submission No.....)  
(DATE BID SUBMITTED)  
to..... for.....  
(TO WHOM SUBMITTED) (NAME OF CUSTOMER)  
on..... at.....  
(NAME OF JOB) (LOCATION OF JOB)  
in the amount of \$.....  
(AMOUNT OF BID)  
for furnishing.....  
(GENERAL NATURE OF EQUIPMENT)  
as per plans and specifications of.....  
consisting of.....elevations of special work, Nos.....  
and.....elevations of stock work, Nos.....  
Bids on above job are to be opened on....., 19....

Remarks: .....  
(IF BID IS ONLY ON PART OF CONTRACT, OR THERE ARE ANY OTHER  
QUALIFYING CONDITIONS, PLEASE SO STATE.)

.....  
You are authorized to interchange copies of the foregoing among all members of the XYZ Association reporting to you a bid upon the above named job.

NOTICE: We have also submitted the following alternate bid on the above named job, as per plans of.....  
consisting of.....elevations of special work, Nos.....  
and.....elevations of stock work, Nos.....  
in the amount of \$....., copies of which you are  
authorized to interchange only among those likewise reporting alternate bids,  
Yours very truly,

.....  
By.....

Date received by commissioner.

.....

Job No.....

missioner's office, where all bids are arranged in a file according to names of prospective customers. If no other members quote the same prospective customers upon the same parts within two months, it is assumed that no competitive quotation was made. As soon as the records show that two members have quoted on the same parts, a report is made out on the form provided for the purpose, showing the names of members quoting, part number quoted on, rate per thousand for parts, and the charge for tools. A copy of this report is mailed to both the members quoting, but is not mailed to other members. If a third or fourth or fifth quotation is received, new quotations are added to the report already made out, and a new report is mailed to all members quoting on that part. If one of the members secures the order, he so notifies the commissioner's office. At the regular monthly meeting of the association a statistical report is read showing the number of quotations which have been reported, the number which are competitive, and the number which have been closed.

REPORT OF CONTRACT AWARDED  
XYZ ASSOCIATION

FOR INTERCHANGE AMONG MEMBERS REPORTING BIDS ON JOB SHOWN BELOW

John Smith, Commissioner ..... 19....

On the.....day of....., 19....,  
we closed the following contract, covering our bid reported to you under date  
of....., 19...., our submission No.....:

Name of contractee or customer.....

Location of job.....

General nature of equipment.....

As per plans and specifications of.....

Consisting of.....elevations of special work, Nos.....

And.....elevations of stock work Nos.....

Net selling price \$.....

Terms of payment.....

Time delivery to be made.....

Allowances given, or other qualifying conditions.....

You are authorized to furnish duplicate copies of the foregoing to all members of the XYZ Association who reported bids to you on the above named job.

By.....

Date received by commissioner.

.....

Job No.....

The second type of reporting plan is that used in businesses in which goods are sold to jobbers and retailers and in which transactions are closed currently for quantities of goods which may be more or less closely graded and standardized. Great differences exist between associations with respect to the amount of detail and the frequency of reports by members to the central office. In the most extreme form, all particulars as to the day's business would be forwarded daily to the central office by each member. The recently adopted plan of the Hardwood Manufacturers Association approaches this very closely.<sup>48</sup> A sales report must be made

A.B.C. ASSOCIATION					
SECRETARY'S REPORT OF QUOTATIONS					
Buyer X Automobile Co.			Date 3/20/17		
Article	Quantity	Member 1	Member 2	Member 3	Closed by
		3/16	3/18	3/20	
Part S63	50,000	23.20/M \$875.T	23.00/M \$600.T	23.40/M \$700.T	Member No. 2 at price quoted.

## REMARKS

Member 1—Delivery 4 to 8 weeks  
Material O. H. H. R. Steel 1/4"  
Member 2—Delivery 8 to 12 weeks  
Material ditto  
Member 3—Delivery 4 to 8 weeks  
Material ditto

T—Tool Charge

S—Service Charge

D—Delivery

<sup>48</sup> In the plan of the Hardwood Manufacturers Association, which went into operation March 1, 1917, six different reports are to be made by the members: production reports, sales reports, shipping reports, stock reports, price-lists and inspection reports. The production reports are monthly reports made by each member of the grades and thicknesses, classified according to a scheme adopted at the time the open price plan was put into operation. These reports are summarized by the secretary and mailed to the members within fifteen days of the close of each calendar month. Shipping reports are to be made daily with the sales reports and include copies of invoices, special agreements as to terms, grade, etc. Each member reports monthly through the secretary the amount of stock of each grade, kind, and thickness on hand the first of the month. Totals are reported by the secretary to the members. Price-lists are to be filed by each member at the beginning of each month at the same time as the filing of the stock reports. Prices are to be made f. o. b. shipping point. Every change in price must be filed with the association currently as soon as made. It is not compulsory for any member to follow the price-list or the



daily by each member to show all sales and cancellations made that day whether any business has been transacted or not. They are to be exact copies of orders taken and to include all sales, large or small, to include all special agreements of every kind with reference to price, grade, or terms, whether the agreement is written or verbal. The secretary's report to members upon sales, which is weekly, divides customers into two classes. Class A includes all wholesalers, retail yards, and all others who resell except exporters, and may include others by consent of members; the names of these sellers and of customers and prices are shown. Class B includes all consumers who do not resell the stock as lumber, and also exporters; but in reporting these sales, name of customer and place shipped are not to be shown on the secretary's reports.

The reluctance of members to furnish competitors with detailed information, the lack of adequate financial support, and the amount of labor involved in handling reports are responsible for the fact that most so-called open price associations do not carry out the open price plan fully. The divergence from complete open price methods may be small and unimportant or may be so great as to give rise to the question as to whether a particular organization should be classed among open price associations or not. In the reporting scheme of the Leather Belting Exchange which furnishes an example of the former, copies of all invoices are sent by members to the central office; but only those above sixty dollars are listed in the secretary's report to members.<sup>49</sup> It is said that thereby ninety per cent of the invoices are eliminated and the resulting reports are not materially affected as indicia of market conditions.

changes which he reports to the association. Upon the basis of these price-lists the secretary reports to the members within the first ten days of each month a summary of prices asked by members, and any changes are reported currently to all members by the secretary. Inspection reports are special reports established for the purpose of checking up grades of lumber which have been fixed by the committee as a basis for operating under the open price plan. The purpose is to furnish each member a basis upon which he can compare his prices with other members, thereby making the price reports more intelligible and accurate.

<sup>49</sup> W. V. Spaulding, *Experiences in Coöperative Competition*, pp. 6, 7. The National Association of Brass Manufacturers has a somewhat similar plan. Copies of all invoices are sent daily by members to the commissioner. The report of the latter upon the basis of information received gives the size, quantity, and kind of goods sold, the city in which the sales were made, and the prices at which the goods were sold. Customers' names do not appear while sellers' names are given in cipher, a key to which is furnished to members.

These give a transcript of data including length, width, thickness, weight discounts, and price of belting sold, but the buyer's name does not appear and the seller's name is designated by a code number known to the secretary only. If any member wishes more specific information concerning a transaction, he may secure it by application to the secretary who, without revealing names, corresponds with the seller. To give another instance, all members affiliated with the Information Bureau of the Western Pine Manufacturers' Association send in each day an exact copy of orders taken. In the office of the secretary these are compiled into a daily report which contains all the information regarding orders except the name of the customer and the town in which he is located.<sup>50</sup>

Other associations illustrate more pronounced variations from the details of the plan of organization as outlined by Mr. Eddy. Members of the Optical Manufacturers Association, having initially filed lists of prices, notify the secretary immediately of any change, and also submit weekly reports as to the amount of business transacted, from which the secretary's monthly summaries of business are compiled. The Ohio Millers State Association requires only a weekly report of selling prices of flour and mill products, buying prices of wheat, and information as to stocks of wheat and flour, all of which is combined with comments among general conditions and reported to members. The monthly reports of the Asbestos Textile Manufacturers' Association give detailed statistics as to the amounts of sales, stocks, orders filled, orders unfilled, high, low and average prices both for orders and sales. Individual transactions are not reported.

The Associated Metal Lath Manufacturers furnishes an interesting as well as a highly unusual example of an association which has attempted to carry the open price methods into the reselling of its products by jobbers and representatives. Members notify the central office of any changes in prices from lists previously filed as applying to distributors; such changes are immediately reported to other members. In order to secure current reports upon the fluctuating prices in the larger cities between jobber, dealer, and consumer, local associations have been organized in important centers, which comprise branch houses, repre-

<sup>50</sup> That is, the state in which the sales are made, rate of freight from shipping point, name of selling firm, and each item with the amount and delivered price as well as the price f. o. b. mill.

sentatives and jobbers directly representing the manufacturer. These local organizations exchange information through their local directors office—all prices which they quote as well as a weekly sales report which gives all details of sales except the buyer's name. The local reports are dispatched to the office of the Associated Metal Lath Manufacturers and forwarded promptly to each member.<sup>51</sup>

### *Legal Status of Open Price Associations*

The legal status of open price associations operating along lines proposed by Mr. Eddy has as yet not been definitely determined by pronouncement of the courts or legislative enactment. Proponents of the plan declare that open price methods are in full conformity with both federal and state laws. It is said that a number of associations have submitted their constitutions and by-laws to the Department of Justice and to the Federal Trade Commission; some have gone so far as to file minutes of meetings with the latter body. In every case, however, the attitude of officials has been strictly non-committal neither affirming nor denying the legality of open price organization. Opinions as to the status must therefore be derived from a composite study of the legality of the essential features and operation of open price associations. The only case in which a good example of such organization has been brought before the courts was incidentally in the suit to dissolve the Steel Corporation when testimony was taken upon the Bridge Builders' and Structural Society. In the final opinion nothing was said specifically concerning that association but in speaking of the "Gary dinners" certain statements were made which seem to have a direct bearing upon open price methods.

The legal propriety of associations of competitors for certain purposes is unquestioned. Trade associations being nothing more than individuals, firms, or corporations engaged in a particular line of trade and acting under some kind of a formal organization are not obnoxious to law.<sup>52</sup> The purposes for which associations may legitimately be formed are numerous, including social intercourse, protection against insolvent debtors, publication of statis-

<sup>51</sup> Cf. program New England Builders' Supply Association, Feb. 20, 1917, p. 43.

<sup>52</sup> *Trust Laws and Unfair Competition*, Report of the Commissioner of Corporations, dated March 15, 1915, p. 714.

tical data, etc. The exchange of information as to actual sales and prices received or quoted appears to be a legal purpose for an association provided such statistics truthfully represent current prices based upon actual sales or offers to sell or buy. But as has been stated in one case, if prices are misrepresented with a view to boosting the prices of any items, such action will be condemned by the courts.<sup>53</sup>

There seems to be no legal objection to coöperation of competing concerns in the introduction of a uniform cost accounting system. The Federal Trade Commission recommends the extension of cost accounting and is willing to lend its aid in devising a suitable uniform system. But the adoption of uniform cost accounting and the exchange of information with regard to costs may be used as a means of fixing prices by indirection, perhaps in accordance with the highest costs as was the case with some of the farm machinery trade associations.<sup>54</sup> This is an abuse of the discussion of costs and not a fundamental objection to the open price plan.

Meetings of competing firms to discuss business conditions including prices are not illegal provided the result does not amount to an agreement to fix prices. The government, in the original petition to dissolve the steel combination, concedes this by stating,

<sup>53</sup> The efforts of the Yellow Pine Manufacturers' Association to raise the price of lumber were declared unlawful. Although the association disclaimed any effort to raise prices, in the system of published current prices compiled by the secretary from reports of members, only the higher prices were given. The result was that prices constantly advanced and that "while a rigid adherence to the price fixed was in the nature of things well nigh impossible, yet the prices charged revolved about the prices fixed like planets in their orbits revolve about the sun." A writ of ouster was suspended upon the condition among others that the respondents would in the future sell lumber in free and open competition, and that they would not be a party to the publication of any price current except such as gave honest information with respect to actual and bona fide sales of such products and the prices paid therefore. It is to be noticed also that this decision sanctions the collection and dissemination of such information as is desired for the operation of the open price plan. Cf. *Trust Laws and Unfair Competition*, pp. 719, 720. *State v. Arkansas Lumber Co. et al.*, 169 S. W. 145, 176, 177, 179.

<sup>54</sup> *Farm Machinery Trade Associations*, Report of the Bureau of Corporations, dated March 15, 1915. The National Association of Wagon Manufacturers, the National Plow Association, and the National Implement and Vehicle Association were all very active in furthering the adoption of a uniform cost accounting system but their methods differ from those of well directed open price associations in that they discussed and recommended future prices. Report, pp. 23 *et seq.*, 45, 46 *et seq.* Cf. also the discussion of the significance of the cost system in relation to selling prices, pp. 54-55.

"It is not hereby alleged that merely assembling and mutually exchanging information and declaration of purpose amount to an agreement or combination in restraint of trade."<sup>55</sup> And in the opinion even more specifically the right to discuss prices is affirmed. However, a distinction is implied between past and future prices. Discussion and declaration of intent as to future prices may have the result of an agreement as to prices. But the open price plan contemplates neither of these; it provides only for a discussion of prices already quoted. Compliance with the association agree-

<sup>55</sup> *United States v. United States Steel Corporation et al.*, District Court, District of New Jersey, June 3, 1915, 223 Fed. Rep. 55 *et seq.* Speaking of the Gary dinners, Judge Buffington says (pp. 154, 160):

"We may begin the discussion by quoting the Government's concession in the original petition—'It is not here alleged that merely assembling and mutually exchanging information and declaration of purpose amount to an agreement or a combination in restraint of trade.' With this concession we are in full accord. In these days every large business has its societies and associations, and these meet periodically to exchange information of all kinds, to compare experiences, to take notes of improvements in machinery or process, to discuss problems, and generally to profit by the interchange of ideas and the study of observed facts. When the business is manufacturing of course all this has a bearing on the subject of prices, and these conferences may therefore consider that subject specifically. It is probably unusual, however, to find such a meeting a declaration of intention to charge such and such prices, although a mere declaration to that effect could hardly be regarded as unlawful. Freedom of speech and freedom of action are justly prized in American society, and no legislation forbids men to come together and speak freely to each other about every detail of their common business. But at this point we approach debatable ground, for an individual is permitted to do some things that are denied to an association of individuals, and where, at a meeting of many persons, such action is taken whose legality is afterwards called into question, the decision may be vitally affected by ascertaining the fact whether such action was really taken by each individual acting for himself, or whether those present were in fact pursuing a common object. . . . The final test, we think is the object and effect of the arrangement, and both the object and effect were to maintain prices, at least to a considerable degree."

Mr. Eddy analyzes the bearing upon open price associations of this decision as follows:

"1. The fundamental proposition of the open price policy, namely, the right of men to meet and exchange information regarding prices that have been made, is approved.

2. The attempt to go farther and discuss prices to be made is disapproved.

3. The court explicitly recognizes the radical distinction between the analysis of past prices and the discussion of future prices.

4. The only fault found with the Gary dinners is that those present made announcements of intentions regarding prices."

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ment involves simply the giving of certain information. Still, it must be recognized that when competitors meet informally and frequently as they do in many open price associations, the danger is always present that implied or express consideration of future prices will not be completely avoided. Larger associations guard against this by having counsel present at every meeting whose duty is to warn the meeting when debatable ground is being approached. Nevertheless, from various sources it has been learned that in a number of so-called open price associations, price fixation is carried on either because of the ignorance of the members of what they can legally do, or through deliberate intent to evade the law. Needless to say, such associations depart from the open price policy in so doing and the open price organization is simply a cloak for illegal action.

In the last analysis, the legality of this form of organization will depend upon its effect upon public welfare. No matter how legal the type of organization or how innocent the purposes may be, if its actions result in restraining the rights of co-members or others, such actions will be condemned by the courts. If open price methods are rightly employed, the results will in all probability be such as would receive the approval of the law. Open price methods need not result in direct or indirect fixation of prices inimical to public policy.

### *Conclusion*

The open price association is of too recent origin and other influences during the past few years have been too numerous and confusing to permit a study of the price movement in industries affected to have any value. *A priori* one would expect that the interchange of information placing in the hands of each seller the same market data, the accuracy of which is unquestioned, would have a tendency to stabilize prices. That this has been an actual result is asserted by members and officers of open price associations. Stability of prices is desirable; but only if the level is not unreasonably high. There seems to be no reason to believe, if associations confine their activities to study and discussion of past transactions, that the level of prices would be raised to an extent which could be said to be injurious from the standpoint of public policy.<sup>56</sup>

<sup>56</sup> It is conceivable that by long association the competitors in a given line might be led to regard as normal or desirable a higher margin of profit than that to which they had been accustomed; and in making prices individually

There are advantages both to consumer and producer of the spread through cost accountancy of a knowledge of costs of production. Study and comparisons of costs make for an increased efficiency resulting eventually in higher profits to the producer or lower prices to the consumer, perhaps both. Price cutting due to ignorance of costs is eliminated, to the immediate benefit of producers and to the ultimate good of consumers. Nevertheless, it must be recognized that in a well-developed industry, the costs of production in competing plants will not show great variations and that when prices are made upon the basis of costs ascertained by a uniform system, differences will often be less than before, although competition is not restrained.

Information as to competitors' business affairs, actual sales and transactions, does not prevent the free play of competitive forces. Each concern is as anxious to sell and to increase its sales as before and is as free to quote whatever prices it desires to secure its object. Such knowledge is little different in character from the information given out by our stock or produce exchanges as to bids, offers, and actual transactions; in fact, the furnishing of this information is an important and legitimate function; yet no one would deny the existence of a competitive market in wheat or cotton.

The open price association as an organization which endeavors to increase the profitableness of an industry by placing information as to past transactions at the command of members for consideration and analysis in individually deciding upon future prices has, therefore, potentialities both beneficial and injurious to public welfare. The coöperation of competing concerns in securing and distributing this information appears to be legal as well as economically desirable. Yet the open price organization is peculiarly susceptible of abuse. Whether the advantages of the new type of association will outweigh the disadvantages in actual operation is a question to be answered when the fund of experience and amount of reliable data available is greater and more conclusive than at present.

H. R. TOSDAL.

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act so as to bring this about. In the absence of some basis for monopoly, this condition of higher than normal return would not continue indefinitely. New competition would be attracted and eventually the rate of return would be restored to normal.